THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.No.11131 OF 2007

Dated 19-06-2007

Between:

M/s Sarda Agro Oils Ltd.,
Rep. by its Managing Director

…Petitioner

And

M/s Andhra Pradesh Foods and another

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.No.11131 OF 2007

ORDER:

The petitioner seeks a *Writ of Mandamus*, to declare the action of the 1st respondent in withholding the Bank guarantee, and certain

other amount, representing the cost of goods, as illegal, arbitrary, and prays for necessary directions.

The 1st respondent issued tender notice dated 12-05-2006 inviting tenders for supply of vanaspati. The petitioner responded to the same and emerged as the successful tenderer. An agreement was entered into, to be in force from 06-06-2006 to 31-03-2007. Towards fulfilment of conditions, it paid E.M.D., of Rs.1 crore, by way of bank guarantee, and Rs.23,75,000/- in cash. Rs.87,80,400/-, was deposited towards security. By the time the contract came to an end, on 31-03-2007, there was some short supply. The petitioner approached the 1st respondent for refund of the E.M.D., and the balance amount due, towards the value of the vanaspati supplied by it.

The 2nd respondent claims that it had entered into an understanding with the petitioner, in relation to the very contract and made investments for depositing the E.M.D., and to meet the cost of the material. It filed O.S.No.147 of 2007 in the Court of II Additional Chief Judge, City Civil Court, Hyderabad, against the petitioner and the 1st respondent, for recovery of a sum of Rs.2,60,00,000/-. It also filed applications for temporary injunction as well as for attachment before judgment. Though, initially, an injunction was granted, it is said to have been vacated, and the application filed under Order 38 Rule 5 C.P.C., is said to have been dismissed. It is urged that a revision is filed before this Court aggrieved by the rejection of temporary injunction.

On behalf of the 1st respondent, a counter-affidavit is filed. The conclusion of a contract with the petitioner is admitted. It is, however, stated that the petitioner did not supply the agreed quantity of goods,

and thereby exposed itself, to certain penal action, apart from recovery of the corresponding amount. Reference is also made to the suit filed by the 2nd respondent herein.

Heard Sri S.R.Ashok, learned Senior Counsel, appearing for the petitioner, Sri T. Balaji, learned Standing Counsel for the 1st respondent, and Sri K. Venugopal Reddy, learned counsel for the 2nd respondent.

The claim of the petitioner is in two parts: the first relates to the refund of E.M.D., and the second, about the unpaid cost of goods, supplied by it. As of now, the 1st respondent did not initiate any punitive action against the petitioner, be it, forfeiture of the E.M.D., or of any other form. The main reason that prompted the 1st respondent to withhold the amounts, payable to the petitioner, appears to be, that the 2nd respondent had instituted proceedings for recovery of the amount against the petitioner as well as the 1st respondent. According to the particulars furnished by the 1st respondent, in their counter-affidavit, it is agreed that E.M.D. of Rs.23,75,000/- and security deposit of Rs.87,80,400/-, was received. A sum of Rs.35,69,973.75 ps., is payable for supply of vanaspathi. Thereby, the total amount payable to the petitioner, apart from the Bank guarantee of Rs.1 crore; is Rs.1,47,25,373.75 ps. Towards differential cost, Rs.52,40,834/- is sought to be deducted. The balance payable to the petitioner comes to Rs.94,84,539/-. Though the petitioner claims that even the amount of Rs.52,40,834/- is payable to it, this Court is not inclined to accept the contention. Such disputes have to be resolved elsewhere.

Coming to the claim of the 2nd respondent, *vis-à-vis* petitioner and the 1st respondent, it needs to be observed that the suit filed for

recovery of the amount is yet to be adjudicated. It makes little difference, whether the money, payable to it, is with the 1st respondent, or with the petitioner. Serious financial loss would accrue to the petitioner, if it is disabled from recovering the concerned amounts from the 1st respondent. Different things would have ensued altogether, had the 2nd respondent been a party to the contract, or if there existed any material, to show that the amounts, in their entirety, or in part, were deposited by it, are with the 1st respondent.

For the foregoing reasons, the writ petition is disposed of, directing that,

a) the 1st respondent shall refund the bank guarantee of Rs.1 crore and a sum of Rs.94,84,529/- within one week from today, to the petitioner.

b) It shall be open to the petitioner to work out its remedies as regards Rs.52,40,834/- withheld by the 1st respondent.

c) The payment made by the 1st respondent to the petitioner, as indicated above, shall be without prejudice to the right of the 2nd respondent, as may be adjudicated by the Court, in which O.S.No.147 of 2007 is pending.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.19-06-2007.

***Note**:*

c.c in three days.

*(B/O)KO**